APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 14, 1973

Before

Hon. LUTHER M. SWYGERT, Chief Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge

JEROME V. HANSEN,

Plaintiff-Appellant,

No. 73-1603 vs.

JOHN C. AHLGRIMM and HARLEY BROWN,

Defendant-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.
No. 72-C-20

John W. Reynolds, Judge.

Motion for Affirmance under Rule 22.

O R D E R

As to the issues raised in points I and II of appellant's brief, the motions for affirmance without oral argument are granted. The order staying the taking of depositions was within the trial court's discretion because the pos-

sibility of harassment was apparent and no facts which could be established at the deposition were relevant to the motions to dismiss. It was proper not to treat the motions to dismiss as motions for summary judgment because even on a motion to dismiss, the trial judge could take judicial notice of Wisconsin law, and was not bound to accept as true the legal conclusion alleged in the complaint that defendant Ahlgrimm acted without jurisdiction.

Wisconsin trial courts retain jurisdiction to enforce judgment pending appeal. *Freeman Printing Co.* v. *Luebke*, 36 Wis.2d 298 (1967); *Carpenter Baking Co.* v. *Bakery S.D. Local Union*, 237 Wis. 24, 37 (1941). Plaintiff charges that this is unfair, but he cites no specific authority for the proposition that it is not the law of Wisconsin. Consequently, we conclude that defendant Ahlgrimm had jurisdiction to enter the order complained of and that he is therefore immune to suit for damages. His motion for affirmance without oral argument is granted as to the damage claim.

Plaintiff also seeks a declaratory judgment and "such other relief as shall be appropriate." Defendant Ahlgrimm is not immune to a complaint for declaratory judgment. But we cannot resolve this issue without oral argument because we have no way of knowing whether any case or controversy remains after the dismissal of the damage claim. The motion for affirmance without oral argument is denied as to this issue.

The remainder of defendant Brown's motion for affirmance without oral argument is also denied. Brown's brief appears to assume that he could not have acted under color of law unless he conspired with defendant Ahlgrimm. But it is possible that he conspired with the law enforcement officials who attempted to execute the bench warrant. Fur-

ther, paragraph 10 of the complaint appears to allege that prosecuting the Order to Show Cause was an act under color of law without regard to any conspiracy. Section 1983 suits against private individuals to enforce rights announced in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), and *Fuentes* v. *Shevin*, 407 U.S. 67 (1972), may be relevant here. See, *e.g.*, *Klim* v. *Jones*, 315 F.Supp. 109 (N.D. Cal. 1970). We are unable to resolve these issues without further comment from the parties.

IT IS FURTHER ORDERED that:

1. The Order of the trial court staying the taking of depositions is affirmed;

2. The decision of the trial court in refusing to treat the motions to dismiss as motions for summary judgment is affirmed;

3. The dismissal of damage claims against defendant Ahlgrimm is affirmed; and

4. The remaining issues in the case shall be set for oral argument, and the parties are directed to be prepared to discuss the following points in light of this decision:

a. Whether any case or controversy remains between plaintiff and defendant Ahlgrimm;

b. Whether defendant Brown acted under color of law;

c. Whether defendant Brown is immune from suit; and

d. Whether, if defendant Brown acted under color of law and is not immune from suit, his alleged acts violated plaintiff's civil rights.

e. Whether, since the act of defendant Brown, complained of was the commencement of a proceeding in a state trial court with jurisdiction, abstention based on comity would be appropriate because of the availability of state appellate remedies.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Civil Action No. 72-C-20

JEROME B. HANSEN,

Plaintiff,

v.

JOHN C. AHLGRIMM and HARLEY BROWN,

Defendants.

DECISION AND ORDER

In October 1970 Jerome and Betty Hansen were divorced. Jerome did not like the divorce judgment which ordered him to pay more than $100,000, and he appealed to the Wisconsin Supreme Court. Betty then sought an order granting her temporary alimony and attorney's fees while the appeal was in progress. She also sought to compel Jerome to perform the judgment or execute an undertaking. Her requests were quite common and had long been provided for by the Wisconsin Statutes. Wis. Stats. §§ 247.39 and 274.17. The orders were duly entered but were, unfortunately, no more than Jerome's liking than the original judgment itself. Jerome ignored them and in accordance with statute was committed to the county jail. Wis. Stats. §§ 247.37 and 295.03. Jerome then filed this

civil rights action in federal court alleging that the county judge who entered the orders and the attorney who represented his wife had conspired to deprive him of his liberty and various other constitutional rights in violation of 42 U.S.C. § 1983. Five thousand dollars in compensatory damages and $200,000 in punitive damages are sought. Defendants have moved to dismiss the complaint for failure to state a valid claim. Their motion is granted.

On motion to dismiss, all allegations of fact in plaintiff's complaint are assumed to be true. Legal conclusions in the complaint, of course, are not. The only additional factual allegations in the complaint in this case are that the defendant judge and the defendant attorney did what they did for the purpose of forcing plaintiff to abandon or delay his appeal under peril of imprisonment. Allegations of the damage caused by the conspiracy are also made.

Counsel for both parties have dealt at length with whether the defendant judge's actions were within his authority under state law. That, of course, is a question of state law, of little relevance to the federal question plaintiff is trying to raise here. As I understand the conclusory complaint, plaintiff is contending that the orders to pay temporary alimony and either perform the judgment or execute an undertaking while the appeal is in progress combined with the imprisonment of plaintiff for disobeying the orders offend notions of fundamental fairness and thus violate due process of law. Although the defendants' actions do not appear improper, I need not deal with the merits of plaintiff's contention, for this action is barred at the threshold by the doctrines of judicial immunity and state action.

Plaintiff does not deny that the defendant judge was acting within his judicial role and attempting to perform his official duties. He is therefore immune from a damage suit against him as an individual under the Civil Rights Act. *Pierson* v. *Ray,* 386 U.S. 547 (1967); *Jacobson* v. *Shaefer,* 441 F.2d 127 (7th Cir. 1971); *Brown* v. *Dunne,* 409 F.2d 341 (7th Cir. 1969); *Sullivan* v. *Kelleher,* 405 F.2d 486, 487 (1st Cir. 1968); *Agnew* v. *Moody,* 330 F.2d 868, 869 (1964). The judge's motive in acting within his judicial role does not affect the scope of his immunity.

Had this civil rights suit been against the defendant attorney alone, it is clear that no state action would have existed. *Reinke* v. *Richardson,* 279 F.Supp. 155 (E.D. Wis. 1968); *Kregger* v. *Posner,* 248 F.Supp. 804, 806 (E.D. Mich. 1966); *Pugliano* v. *Staziak,* 231 F.Supp. 347, 351 n. 5 (W.D. Pa. 1964), aff'd 345 F.2d 797 (3rd Cir. 1965). Evidently plaintiff contends that because the attorney allegedly conspired with the judge, a state officer, the attorney's actions became state actions with the rule of *United States* v. *Price,* 383 U.S. 787, 794 (1966), even though the state officer is himself immune from suit. Courts faced with this contention have, however, consistently rejected it holding that to come within the rule of *Price* the private citizen must conspire with a state official against whom a valid claim could be stated. *Haldane* v. *Chagnon,* 345 F.2d 601, 604-605 (9th Cir. 1965); *Stambler* v. *Dillion,* 302 F.Supp. 1250, 1255 (S.D. N.Y. 1969); *Shakespeare* v. *Wilson,* 40 F.R.D. 500, 504-505 (S.D. Cal. 1966).

Whether the rule of *Price* should be this narrowly construed or not, showing state action requires something more than the conclusory allegations of conspiracy in plaintiff's complaint. A complaint containing no pleaded facts describing the conspiracy and the extent to which it

connected the private citizen to the state is insufficient. *Guedry* v. *Ford*, 431 F.2d 660, 664 (5th Cir. 1970); *Morgan* v. *Sylvester*, 125 F.Supp. 380 (S.D. N.Y. 1954) aff'd 220 F.2d 758 (2d Cir. 1955). See also *Fletcher* v. *Hook*, 446 F.2d 14 (3rd Cir. 1971).

IT IS THEREFORE ORDERED that defendants' motion to dismiss the complaint be and it hereby is granted.

Dated at Milwaukee, Wisconsin, this 27th day of April, 1973.

John W. Reynolds
U. S. District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

December 10, 1973

Before

Hon. LUTHER M. SWYGERT, Chief Judge
Hon. THOMAS E. FAIRCHILD, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge

JEROME B. HANSEN,
Plaintiff-Appellant,

No. 73-1603 vs.

JOHN C. AHLGRIMM and HARLEY BROWN,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Wisconsin.

(72 C 20)

On consideration of the petition for rehearing filed in the above-entitled cause,

IT IS HEREBY ORDERED that the petition for rehearing in the above-entitled appeal be and the same is hereby denied.

APPENDIX D

U. S. DISTRICT COURT
FOR THE
EASTERN DISTRICT OF WISCONSIN

Civil Action File No. 72-C-20

JEROME B. HANSEN,

Plaintiff,

vs.

JOHN C. AHLGRIMM, and HARLEY BROWN,

Defendants,

COMPLAINT

JURISDICTION

The plaintiff, Jerome B. Hansen, by his attorneys, Samson, Friebert, Sutton & Finerty, alleges and shows to the court as follows:

1. That the plaintiff brings this action pursuant to the provisions of the Civil Rights Act, 42 USC Sec. 1983 to obtain relief against the defendants for deprivation by the defendants under color of law of the rights, privileges and immunities secured to the plaintiff by the 8th, 9th and 14th Amendments to the Constitution of the United States.

2. Jurisdicion of this action is conferred upon this court by 28 USC Sec. 1343 and 42 USC Sec. 1983.

CAUSE OF ACTION

3. The plaintiff is and was at all times hereinafter material, an adult citizen of the United States and a resident of the Eastern District of Wisconsin.

4. The defendant, John C. Ahlgrimm is and was at all times hereinafter material, an adult citizen of the United States and a resident of the Eastern District of Wisconsin, and the duly elected Judge of Branch 4 of the County Court for Racine County, Wisconsin.

5. The defendant, Harley Brown is and was at all times hereinafter material, an adult citizen of the United States and a resident of the Eastern District of Wisconsin, and an attorney duly licensed to practice law in the State of Wisconsin.

6. On October 21, 1970 a judgment of divorce was entered in Branch 4 of the County Court of Racine County, Wisconsin, the defendant John C. Ahlgrimm, Judge presiding, severing the bonds of marriage between the plaintiff and Betty K. Hansen and at those proceedings and at all subsequent proceedings Betty K. Hansen was represented by the defendant, Attorney Harley Brown.

7. Pursuant to the judgment of divorce entered in paragraph 6 above, the plaintiff was ordered to pay to Betty K. Hansen the amount of $105,616.20 in full settlement of the estate of the parties.

8. Pursuant to the laws and statutes of the State of Wisconsin then and there obtaining, the plaintiff through his attorneys, perfected an appeal from the judgment reflected in paragraphs 6 and 7 above.

9. On March 23, 1971, the defendant, Harley Brown, prosecuted an Order To Show Cause on behalf of Betty K. Hansen requesting the defendant, Judge John C. Ahlgrimm issue an alternative order that the plaintiff pay the sum ordered under the divorce decree or a warrant issue committing the plaintiff to a place of imprisonment.

10. The plaintiff is informed and verily believes that the defendant Harley Brown prosecuted said Order To Show Cause without legal basis under color of law for the purpose, inter alia, of forcing the plaintiff to forfeit his appellate rights under peril of imprisonment and to deprive him of his liberty without due process of law in violation of the rights of the plaintiff as guaranteed under the 8th, 9th and 14th Amendments to the Constitution of the United States.

11. On March 24, 1971 the defendant, John C. Ahlgrimm, acting under color of law as a Judge of the County Court of Racine County, Wisconsin, acting without jurisdiction under the laws of the State of Wisconsin and acting upon the Order To Show Cause presented by the defendant Harley Brown, entered an order against the plaintiff as more clearly appears from Exhibit 1 attached hereto and made a part hereof.

12. On June 17, 1971 the defendant John C. Ahlgrimm again acting under color of law as a Judge of the County Court, Racine County, Wisconsin and acting without jurisdiction under the laws of the State of Wisconsin, ordered that a warrant issue for the arrest and imprisonment of the plaintiff for failure to comply with the order as reflected in Exhibit 1.

13. Between March 23, 1971 and July 15, 1971 the defendants acted in concert under color of law as above described in paragraphs 9 through 12 to deprive the plaintiff of rights, privileges and immunities to which he was entitled under the Constitution of the United States including due process of law, privacy and freedom from cruel and unusual punishment under the 8th, 9th and 14th Amendments to the Constitution of the United States.

14. As the proximate result of the conspiracy of the defendants and the warrant issued for the arrest and imprisonment of the plaintiff, the plaintiff was forced to flee his home and his home community and enter hiding as a fugitive hunted by law enforcement officials, all to his great mental anguish, extreme embarrassment and humiliation.

15. That as a proximate result of the conspiracy aforedescribed, the plaintiff further was forced to act against his will in the following particulars:

a. To forfeit his rights of appellate review in the courts of the State of Wisconsin regarding the judgment entered against him on October 21, 1970 as reflected in paragraphs 6 and 7 above.

b. To compromise the settlement and accept as terms of the compromise dismissal of litigation then pending before the United States District Court for the Eastern District of Wisconsin.

16. As a proximate result of the conspiracy aforedescribed the plaintiff was obliged to retain legal counsel and defend against the warrant issued, all to his damage in the amount of $5,000.00.

WHEREFORE, plaintiff prays:

1. That an order issue declaring that the acts of the defendants aforedescribed culminating in the issuance of the warrant for the arrest and imprisonment of the plaintiff violated rights, privileges and immunities as guaranteed to the plaintiff under the Constitution of the United States.

2. That a judgment be entered against the defendants and each of them in the amount of $5,000.00 compensatory damages, and $200,000.00 punitive damages, together with costs and reasonable attorneys' fees.

3. For such other relief as shall be appropriate.

Samson, Friebert, Sutton & Finerty
By */s/ Robert H. Friebert*
Robert H. Friebert
710 North Plankinton Avenue
Suite 840
Milwaukee, WI 53203

JURY DEMAND

The plaintiff by Samson, Friebert, Sutton & Finerty, his attorneys, demands that all issues of fact in the above entitled action be tried and submitted for determination to a jury of twelve (12) members.

Samson, Friebert, Sutton & Finerty
By */s/ Robert H. Friebert*
Robert H. Friebert
Attorneys For Plaintiff

EXHIBIT 1

STATE OF WISCONSIN

COUNTY COURT RACINE COUNTY

FAMILY COURT BRANCH

BETTY K. HANSEN, Plaintiff,

-vs-

JEROME B. HANSEN, Defendant.

ORDER

The Order to Show Cause returnable on the 23rd day of March, A.D., 1971, at 1:30 o'clock in the afternoon of said day having come on for hearing before the Honorable John C. Ahlgrimm, County Judge, and the appearance being as follows, to-wit: Betty K. Hansen personally and by Harley Brown, her attorney; the defendant Jerome B. Hansen having failed to appear personally but appeared by Milton R. Bordow, his attorney, and upon the Affidavit of the plaintiff, upon the testimony of her witnesses, the defendant having offered no evidence, upon the argument of counsel and upon all of the records, files and exhibits herein.

That after due consideration of all of the proof, the evidence, the testimony, the documents and arguments of counsel and being fully advised in the premises, I, John C. Ahlgrimm, Judge of County Court #4 of Family Court Branch, Racine County, before whom this action was tried

and before whom this hearing was held, do hereby make the following findings:

FIRST: That from the commencement of this action, there has been a record of orders to show cause, three of them with respect to contempt of the defendant, orders, failures to comply by the defendant, failure to appear by the defendant and failure to act. The record is very complete showing the intent of the defendant, his attitude towards the entire proceedings, his previous actions, his continual actions, his failure to pay, his failure to follow the orders of this Court, his evasiveness and his appearance in Court not bringing books and not bringing documents when necessary. The defendant has been evasive and the Court has to make some decision about witnesses much as a jury would do with respect to the demeanor of the witness, the things that they say, their lack of knowledge and things of that nature. The payments on the homestead of the parties have not been made, contrary to Court order, and aren't being made deliberately. Considering all of these things and the record, and the testimony of the plaintiff in Court today, show a distinctive form and part of a pattern on the part of the defendant, there is no other conclusion except that this is part of a design or nature of the defendant herein.

SECOND: That in order to protect the plaintiff and her rights and upon her testimony, she is unable to pay and has insufficient funds to properly defend the judgment on appeal unless the Court enter an order for suit money, counsel fees and disbursements pending said appeal. That the sum of Two Thousand Seven Hundred Sixty ($2,760.00) Dollars is a reasonable amount for counsel fees and the sum of Three Hundred Twenty ($320.00) Dollars is a reasonable amount for disbursements in said appeal.

THIRD: That the defendant has not complied with the Judgment of this Court in any respect. That based upon all of the records, files and proceedings herein, it appears that the rights of the plaintiff require protection during the pendency of this appeal, which protection the defendant is well able to provide. This protection is necessary so that the plaintiff will not be deprived of the assets assigned to her by said judgment as affirmed or modified by the Supreme Court, whether said assets are intentionally or inadvertently dissipated, disposed of or secreted. That even though the mortgage upon the homestead of the parties occupied by the plaintiff is seriously in default and under threat of foreclosure, that because of the fact that she is employed, because of the protection of the marital assets to be provided by this order, and because the appeal should be completed before a foreclosure sale, no alimony will be granted to the plaintiff.

Upon all of the foregoing,

IT IS HEREBY ORDERED:

(1) That no alimony or maintenance is awarded to the plaintiff during the pendency of this appeal.

(2) That the defendant shall pay to the attorney for the plaintiff the sum of $2,760.00 as counsel fees and $320.00 as disbursements to enable the plaintiff to attempt to sustain the judgment upon appeal, said sum shall be paid within forty-five (45) days from the date of this hearing on March 23, 1971.

(3) That execution of the judgment entered in this matter dated October 21, 1970, shall not be stayed unless an Undertaking be executed on the part of the defendant-appellant by at least two sureties to the effect that if the judgment appealed from or any part thereof be affirmed,

the appellant will pay the amount directed to be paid by the judgment or the part of such judgment as to which the judgment shall be affirmed, if it be affirmed only in part, and that the appellant will pay all damages which the plaintiff-respondent may have sustained by the doing or not doing of the acts or things directed to be done by the judgment appealed from, together with all damages which shall be awarded against the appellant upon the appeal. Said Undertaking shall be in the sum of One Hundred Thousand ($100,000.00) Dollars and shall be filed with this Court within twenty (20) days from the date of this hearing, March 23, 1971.

Upon failure of the defendant-appellant to execute and file the Undertaking described above, the defendant is hereby ordered to pay the sums set forth in the Judgment of this Court in this action, and to deposit the stock certificates of Gales Manufacturing Corporation owned by the defendant with the Court and further comply in all other respects with said judgment within twenty (20) days from the date of this hearing, March 23, 1971.

In the event the defendant-appellant fails to comply with either of the above alternatives, then, pursuant to Section 247.30 and Section 295.03 of the Wisconsin Statutes, and pursuant to all of the other and additional statutory and inherent powers of the Court to enforce its judgments, a warrant may issue from this Court upon the affidavit of the plaintiff, committing the defendant-appellant to the County Jail until the Undertaking required is filed or the judgment be complied with or until his discharge pursuant to law.

Dated this 24th day of March, A.D., 1971.

By The Court:

s/ *John C. Ahlgrimm*

County Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 73-1603

JEROME B. HANSEN,

Plaintiff-Appellant,

vs.

JOHN C. AHLGRIMM and HARLEY BROWN,

Defendant-Appellees.

PETITION FOR REHEARING

Now Comes the plaintiff-appellant by his attorneys, Samson, Friebert, Sutton, Finerty & Burns by Robert E. Sutton and hereby moves the court for a rehearing pursuant to Rule 40 of the Rules of Appellate Procedure of the United States Court of Appeals for the 7th Circuit on the following grounds:

1) In respect to the issue raised in I of the Appellant's Brief and decided by the court in its decision of November 14, 1973 appellant respectfully request clarification of the ruling therein. The court by its ruling apparently decided that under *Freeman Printing Co.* v. *Luebke,* 36 Wis. 2d 298 (1967) and *Carpenter Baking Co.* v. *Bakery S.D. Local Union,* 237 Wis. 24, 37 (1941) that under Wisconsin law trial courts retain jurisdiction to enforce judgments

pending appeal. However, *Freeman* and *Carpenter Baking* hold to the contrary.

Carpenter Baking Co. stands foursquare for the proposition that the trial court, upon the perfection of an appeal to the Supreme Court, retains jurisdiction *only for the limited purpose of preserving the status quo of the subject matter involved in the judgment appealed from*—that the part of the judgment which may be prohibitory in character remains in force and effect and is not stayed pending appeal. It is respectfully submitted that that particular issue is of absolutely no significance in the resolution of the question raised. The order entered by the defendant, Ahlgrimm, was not in the nature of prohibitory or injunctive relief. It clearly was an order directly involved and dependant upon the judgment from which appeal had been perfected. The holding of *Carpenter Baking Co.* appears unavailing to the circumstances of the case at bar except from the standpoint that it squarely holds that upon an appeal being perfected the trial court loses jurisdiction for all purposes *except* maintaining the status quo.

The holding in *Freeman* is:

> "The general rule relating to the effect of an appeal on the jurisdiction of the trial and appellate court is that *in the absence of a contrary statute* an appeal duly perfected divests the trial court of jurisdiction of the subject matter of the appeal and transfers it to the appellate court where it remains until the appellate proceeding terminates and the trial court regains jurisdiction. Annot., 89 A.L.R. 2d 1236. The rule is stated substantially the same in 4 Am. Jur. 2d, *Appeal and Error,* p. 830, sec. 352, and in 4A C.J.S., *Appeal and Error,* p. 395, sec. 607, where reference is made to exclusive power or the cause, action or subject matter. In the very early case of *Waterman* v. *Raymond* (1856), 5 Wis. 185, the court in deciding it

had the power to order a stay of proceedings in the trial court during an appeal said, '. . . the appeal removes the subject matter, and all matters connected therewith, to this court, and is thenceforth under its control.' *The concept that the appellate court in the absence of statute has exclusive jurisdiction over the subject matter of the appeal for appeal purposes runs through all the Wisconsin cases* although it is recognized there is a diversity in the language in stating the rule and the determinations of what constitutes the subject matter of an appeal." [Emphasis Supplied] 36 Wis.2d at p. 302.

Obviously then for the defendant, Ahlgrimm, to have retained jurisdiction in the case at bar a specific statute must be relied upon, for there is no dispute between the parties that the order in question was entered after the plaintiff-appellant had perfected an appeal to the Wisconsin Supreme Court. The parties briefed the question of the particular statutory authority vel non both in the District Court and in the Circuit Court of Appeals. The position of the defendants was that certain sections of the Wisconsin statutory law allowed the order complained of. The position of the plaintiff-appellant was that the order complained of was not authorized by any Wisconsin Statute. The parties devoted extensive argument pro and con regarding the Wisconsin Statutes. See Brief of Plaintiff-Appellant, pp. 4-7, 13-15, Brief of Defendant-Appellee, Brown, pp. 1-7, Brief of Defendant-Appellee, Ahlgrimm, pp. 2-4, 13-15 and Reply Brief of Plaintiff-Appellant, pp. 6-10.

The opinion of November 14, 1973 does not speak to a resolution of that dispute and plaintiff-appellant respectfully submits that in the posture of the case all parties are entitled to know what Wisconsin Statutes the Court con-

siders to have conferred jurisdiction on the defendant, Ahlgrimm, to enter the order complained of.

Plaintiff-appellant recognizes that the order of November 14, 1973 of this court did not resolve all of the issues on the appeal and, therefore, it is unclear under the rules of appellate procedure whether this petition for rehearing is timely made or should await the final resolution of the appeal. However, this motion is made to protect the right of the appellant to a petition for rehearing directed to the issues raised in point I.

As to the issue in point II also decided in the opinion of November 14, 1973 plaintiff-appellant does not petition for rehearing.

Dated this 26th day of November, 1973 at Milwaukee, Wisconsin.

Samson, Friebert, Sutton, Finerty & Burns

By Robert E. Sutton
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